IN THE HIGH COURT OF JUDICATURE AT BOBBY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 4761 OF 2004

Jatin Jairaj Ahuja @ Pandit ..Applicant.

V/s.

The State of Maharashtra . ..Respondent.

Shri Niranjan Mundargi for the Applicant.
Shri D.R.More, APP for Respondent -State.

CORAM : A.M.KHANWILKAR, J.
DATED : 04.11.2004

PC :-

. Heard learned counsel for the parties. Perused the record.

2. The court below has rejected the bail application, preferred by the Applicant on the solitary reason that the arguments which are advanced were same as were advanced on the earlier occasion. However, it is rightly pointed out by the learned APP that in the first order only three aspects have weighed with the court below while rejecting the bail application of the present applicant. In the first place it is noted that the applicant has been identified by the complainant and the witnesses during the indentification parade. Secondly, the relatives

of the applicant impressed upon the witnesses not to identify the applicant during the investigation parade and lastly, the investigation was still in progress. It is not in dispute that the said first bail application was filed before filing of the chargesheet. On reading the order passed on the first bail application, it is seen that the trial court has not adverted to any material on record except the aforesaid grounds; whereas after filing of the chargesheet it was expected that the trial court would advert to the relavant material on record in the context of the arguments advanced and ought to have thereafter reached at a conclusion whether it was a fit case for bail or otherwise. That exercise has not been undertaken in the present case. It is now well established that filing of the chargesheet is a changed circumstance and the accused is entitled to move bail appilcation, which is required to be considered on its own merits with reference to the material which has come on record alongwith the charesheet, in view of the recent decision of our Court, as expounded in the decision of Justice Bhosale, J. Therefore, appropriate course to my mind, is to relegate this matter to the trial court to consider the case on merits in accordance with law.

3. In this view of the matter, this application is disopsed of with liberty to the applicant to move the trial court as aforesaid. If such application is filed, the same should be disposed of by the trial court as early as possible preferably within two weeks from the date of first hearing.

4. Ordered accordingly.

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